

Federal Acquisition Regulation

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a local area set-aside or an evaluation preference.

26.202-1 Local area set-aside.

The contracting officer may set aside solicitations to allow only local firms within a specific geographic area to compete (*see* 6.208).

(a) The contracting officer, in consultation with the requirements office, shall define the specific geographic area for the local set-aside.

(b) A major disaster or emergency area may span counties in several contiguous States. The set-aside area need not include all the counties in the declared disaster/emergency area(s), but cannot go outside it.

(c) The contracting officer shall also determine whether a local area set-aside should be further restricted to small business concerns in the set-aside area (*see* Part 19).

[72 FR 63087, Nov. 7, 2007, as amended at 76 FR 18312, Apr. 1, 2011]

26.202-2 Evaluation preference.

The contracting officer may use an evaluation preference, when authorized in agency regulations or procedures.

[73 FR 53996, Sept. 17, 2008]

26.203 Transition of work.

(a) In anticipation of potential emergency response requirements, agencies involved in response planning should consider awarding emergency response contracts before a major disaster or emergency occurs to ensure immediate response and relief. These contracts should be structured to respond to immediate emergency response needs, and should not be structured in any way that may inhibit the transition of emergency response work to local firms (*e.g.*, unnecessarily broad scopes of work or long periods of performance).

(b) 42 U.S.C. 5150(b)(2) requires that agencies performing response, relief, and reconstruction activities transition to local firms any work performed under contracts in effect on the date on which the President declares a major disaster or emergency, unless the head of such agency determines in writing that it is not feasible or practicable. This determination may be made on an

individual contract or class basis. The written determination shall be prepared within a reasonable time given the circumstances of the emergency.

(c) In effecting the transition, agencies are not required to terminate or renegotiate existing contracts. Agencies should transition the work at the earliest practical opportunity after consideration of the following:

(1) The potential duration of the disaster or emergency.

(2) The severity of the disaster or emergency.

(3) The scope and structure of the existing contract, including its period of performance and the milestone(s) at which a transition is reasonable (*e.g.*, before exercising an option).

(4) The potential impact of a transition, including safety, national defense, and mobilization.

(5) The expected availability of qualified local offerors who can provide the products or services at a reasonable price.

(d) The agency shall transition the work to local firms using the local area set-aside identified in 26.202-1.

26.204 Justification for expenditures to other than local firms.

(a) 42 U.S.C. 5150(b)(1) requires that, subsequent to any Presidential declaration of a major disaster or emergency, any expenditure of Federal funds, under an emergency response contract not awarded to a local firm, must be justified in writing in the contract file. The justification should include consideration for the scope of the major disaster or emergency and the immediate requirements or needs of supplies and services to ensure life is protected, victims are cared for, and property is protected.

(b) The justification may be made on an individual or class basis. The contracting officer approves the justification.

26.205 Disaster Response Registry.

(a) Contracting officers shall consult the Disaster Response Registry via <https://www.acquisition.gov> to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or

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emergency relief activities inside the United States and outlying areas.

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the CCR Search tool, which can be accessed via <https://www.acquisition.gov>. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with CCR in order to gain access to the Disaster Response Registry.

[74 FR 52849, Oct. 14, 2009, as amended at 77 FR 188, Jan. 3, 2012]

26.206 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the provision at 52.226-3, Disaster or Emergency Area Representation, in solicitations involving the local area set-aside. For commercial items, see 12.301(e)(4).

(b) The contracting officer shall insert the clause at 52.226-4, Notice of Disaster or Emergency Area Set-aside in solicitations and contracts involving local area set-asides.

(c) The contracting officer shall insert the clause at 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area, in all solicitations and contracts that involve local area set-asides.

[72 FR 63087, Nov. 7, 2007. Redesignated at 74 FR 52849, Oct. 14, 2009]

Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions

SOURCE: 62 FR 12703, Mar. 17, 1997, unless otherwise noted.

26.300 Scope of subpart.

(a) This subpart implements Executive Order 12928 of September 16, 1994, which promotes participation of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

[62 FR 12703, Mar. 17, 1997, as amended at 68 FR 28083, May 22, 2003]

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26.301 [Reserved]

26.302 General policy.

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

26.303 Data collection and reporting requirements.

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive order.

26.304 Solicitation provision.

Insert the provision at 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions. For DoD, NASA, and Coast Guard acquisitions, also insert the provision in solicitations that contain the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

[64 FR 36224, July 2, 1999]

Subpart 26.4—Food Donations to Nonprofit Organizations

SOURCE: 74 FR 11831, Mar. 19, 2009, unless otherwise noted.

26.400 Scope of subpart.

This section implements the Federal Food Donation Act of 2008 (Pub. L. 110-247).

26.401 Definitions.

As used in this subpart—

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions, in accordance with (b)(2) of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)).

Excess food means food that—